

quinn emanuel trial lawyers | silicon valley

555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL: (650) 801-5000 FAX: (650) 801-5100

February 1, 2008


The Honorable Claudia Wilkin
United States District Courthouse
1301 Clay Street, Suite 400 S
Courtroom 2
Oakland, California 94612-5212

Re: Thomas v. Disney, et al., Case No. CV 07-04392 CW

Dear Judge Wilkin:

Pursuant to the Court's request during the January 31, 2008 hearing on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, the following cases support the proposition that although ideas are not protected by the Copyright Act, ideas are "within the subject matter of copyright" for purposes of preemption under the Copyright Act, and therefore, without the extra element of an alleged breach of confidence, Plaintiff cannot state a claim for unfair competition: *Blue Nile, Inc. v. Ice.com, Inc.*, 478 F. Supp. 2d 1240, 1247-48 (W.D. Wash. 2007); *Lanard Toys Ltd. v. Novelty, Inc.*, 511 F.Supp.2d 1020, 1030-31 (C.D. Cal. 2007); *Entous v. Viacom*, 151 F. Supp. 2d 1150, 1159 (C.D. Cal. 2001); *Selby v. New Line Cinema Corp.*, 96 F. Supp. 2d 1053 (C.D. Cal. 2000); see also *Wrench, LLC v. Taco Bell Corp.*, 256 F.3d 446, 454-455 (6th Cir. 2001); *U.S. ex rel. Berge v. Board of Trustees of the University of Alabama*, 104 F.3d 1453, 1463, 1465 (4th Cir. 1997); and *NBA v. Motorola, Inc.*, 105 F.3d 841, 849 (2d Cir. 1997).

Respectfully submitted,



Evette D. Pennypacker
51279/2374965.1

cc: Archie Robinson (via email)

quinn emanuel urquhart oliver & hedges, llp

LOS ANGELES | 865 South Figueroa Street, 10th Floor, Los Angeles, CA 90017 | TEL (213) 443-3000 FAX (213) 443-3100
51279/2374965.1 NEW YORK | 51 Madison Avenue, 22nd Floor, New York, NY 10010 | TEL (212) 849-7000 FAX (212) 849-7100
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, CA 94111 | TEL (415) 875-6600 FAX (415) 875-6700
TOKYO | Akasaka Twin Tower Main Building, 6th Floor, 17-22 Akasaka 2-Chome, Minato-ku, Tokyo 107-0052, Japan | TEL +81 3 5561-1711 FAX +81 3 5561-1712